

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 468 of 1984

Date of decision: 07-01-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMLABEN KARANSINH WAGHRI

Versus

NEW INDIA ASSURANCE CO. LTD

Appearance:

MR Amar Bhatt for Petitioners

Ms. M. R. Talreja for Respondents No. 1 & 2

None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/01/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

Petitioners No.1 and 2 are the heirs and legal representatives of one Chandubhai Chaturbhai. Petitioners No.3 to 5 are the heirs and legal representatives of one Shankerbhai Naranbhai. In a vehicular accident which has taken place on 28th January, 1976 both Chandubhai Chaturbhai and Shankerbhai Naranbhai died. Petitioners No.1 and 2 made application being Motor Accident Claim Application No.190 of 1976 before Motor Accident Claims Tribunal for award of compensation from the drivers of the two vehicles, the owners of the two vehicles and the insurers of the two vehicles. Similar application being M.A.C.Application No.287 of 1976 was made by petitioners No.3 to 5. The Tribunal, vide its judgment and award dated 26th September, 1976 partly allowed both the applications and awarded to petitioners No.1 and 2 a sum of Rs.16,500/- with running interest at the rate of 6% per annum from the date of application till realisation and proportionate cost. An amount of Rs.21,000/- has been awarded by the Tribunal to the petitioners No.3 to 5 with running interest at the rate of 6% per annum from the date of application till realisation, and proportionate cost. Inter se liability of the owners and the insurers of the two vehicles was apportioned equally.

2. As usual the insurance companies as well as the owners have not paid the amount of compensation awarded by the Tribunal in favour of the petitioners. The petitioners filed execution application before the Tribunal for recovery of the amounts awarded to them. United India General Insurance Company, the insurer of one of the vehicles deposited a sum of Rs.9,902.26 ps. pursuant to the award of the Tribunal in M.A.C.A. No.190/76 and Rs.12,534.46 ps. pursuant to the award in M.A.C.A. No.286/76. These amounts were deposited by the Company considering its liability to the extent of half of the amount awarded. Respondents No.1 and 2 have deposited the amount of their liability on 29th April, 1979 in pursuance of the judgment and award in both the aforesaid M.A.C.As with the Collector, Delhi. The petitioners could not get that amount and as such they approached the Legal Aid Committee of this Court for necessary action against the respondents. The Secretary, Legal Aid Committee, made correspondence with the respondent Company. From the correspondence made between the Secretary Legal Aid Committee and the respondent Company it transpires that the amount has been deposited with the Collector, Delhi in April, 1979, but the

Collector, Delhi, has not remitted that amount to the concerned Motor Accident Claims Tribunal in Gujarat. Hence this petition with the prayer for direction to the respondents to deposit the amount awarded in favour of the petitioner by the Motor Accident Claims Tribunal, Nadiad, in M/A.C. Case No.190/76 and M.A.C. case No.287/76 decided on 25th October, 1977. Collector, Delhi has also been impleaded as party to this petition.

3. On 21st February, 1984 this Court passed the following order:

"Rule, returnable on 12th March,1984.

Interim direction to Respondent No.3 to remit to this High Court the amounts of the awards made atonce if they are lying with him and if he fails therein, suitable proceedings will be initiated against him."

The counsel for the petitioners admits that this order was not sent or made available or known to the Collector, Delhi. The Collector, Delhi, has been served with notice of this special civil application, but no body has put appearance on behalf of the said party. Here is a case where the respondents have not taken care to see that the poor claimants get the amount of compensation awarded in their favour by the Motor Accident Claims Tribunal, Nadiad, in the two claim applications. This amount has to be deposited by the respondents with the Tribunal, but instead of depositing the same with the Tribunal the same appears to have been deposited in the office of the Collector, New Delhi. Merely because the vehicle in question was insured in Delhi, I fail to see any justification in the action of the respondents to deposit the amount of compensation awarded in favour of the petitioner in the office of the Collector, New Delhi.

4. The petitioners filed this special civil application on 27th January, 1984. Even after receipt of notice of this special civil application the respondents have not taken care to make payment of the amount of compensation awarded by the Tribunal to the petitioners. Even if the amount has been deposited, the respondents should have paid the amount of compensation to the petitioners and should have taken steps to get the amount withdrawn from the office of the Collector, New Delhi. On the contrary, they expect the petitioners, who are poor persons, residing in interior villages of Kheda District to go to New Delhi and take necessary action for withdrawal of the amount. That expectation of the respondents is wholly arbitrary, unjust and against the

comprehension of persons of ordinary prudence. Under the Motor Vehicle Act, 1939 insurance of the vehicle is compulsory. It is the statutory liability of the truck owner to have insured the truck, and in case of any accident to ensure immediate payment of amount of compensation realisable from the insurance company. It is the statutory duty of the insurance company to pay the amounts to the claimants as per the award made by the Tribunal. This statutory obligation has been frustrated by none other than the insurance company. The Collector was directed to remit the amount deposited by the insurance company to this court. But the insurance company has not taken care to get the order served upon the Collector, New Delhi. The resultant position is that though award has been passed in the year 1977, for all these years the poor petitioners could not get the amount of compensation from the respondents. Not only this, these poor persons have been deprived of the use of the amount of compensation. The counsel for the respondents No.1 and 2 contended that the amount has been deposited by the insurance company in the month of April, 1984 and as such there is no liability whatsoever of the insurance company to make any payment of interest on the said amount. I fail to see any justification in this contention of the counsel for the insurance company. The amount has been deposited with an authority which has no concern whatsoever with the matter. It is understandable that if the amount is deposited with the Motor Accident Claims Tribunal concerned, then there may not be any liability of the insurance company to pay interest for the period after the date of deposit of the aforesaid amount. But it is a case where the amount has been deposited by the insurance company, for reasons best known to them, with the Collector, New Delhi, who has nothing to do with the matter. It is also not expected of the petitioners to go to Delhi for receiving the amount from the Collector, Delhi. As per the award the amount is to be deposited with the Tribunal at Nadiad. It is a case where poor petitioners have been deprived of the amount of compensation for all these years without there being any fault on their part. The action of the respondent Insurance Company of depositing the amount of compensation in the office of the Collector, New Delhi, is wholly unjust and arbitrary.

5. In the result this writ petition succeeds. Respondents No.1 and 2 are directed to pay to the petitioners No.1 and 2 Rs.9,902.26 and Rs.12,534.46 ps. to respondents No.3 to 5 within a period of one month from today. Respondents No.1 and 2 are further directed to pay interest on the aforesaid amount at the rate of

12% per annum from 27th January, 1984, the date on which this writ petition was filed by the petitioners, till the date of payment. The amount of interest shall also be paid by respondents No.1 and 2 together with the amount of compensation as aforesaid. Respondents No.1 and 2 are free to withdraw the amount deposited by them in the office of the Collector, New Delhi. Respondents No.1 and 2 are directed to pay Rs.1,000/- (Rupees one thousand) by way of cost of this petition. However, this amount has to be deposited by the respondents No.1 and 2 in the office of the Legal Aid and Advice Board, High Court of Gujarat, Ahmedabad, as consented by the counsel for the petitioner, within a period of one month from today. It shall be open to the Secretary, Legal Aid and Advice Board, Gujarat State, to take appropriate action for recovery of the amount in case the same is not deposited by the respondents as directed above. Copy of this judgment and order shall be sent to the Secretary, Legal Aid and Advice Board, Gujarat State, High Court of Gujarat, Ahmedabad. Rule made absolute in the aforesaid terms.

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